IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1544 OF 2003

Shri Pahilaj Kimatrai. .. Petitioner

Vs.

State of Maharashtra & Ors. .. Respondents

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None present for the Petitioner.

Shri B.H.Mehta, APP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 24th JANUARY, 2005.

1. None present for the Petitioner. Perused the records. The Ld.APP present for the Respondents.

2. The Petitioner challenges the order passed on 28th August, 2002 by the Additional Sessions Judge, Greater Mumbai, in Criminal Revision Application Nos.349 of 2002 to 354 of 2002 and 355 of 2002 and 412 of 2002 to 416 of 2002 thereby allowing those Revision Applications and quashing the process issued against the Respondents. By the impugned order, the Revisional Court has clearly held that in none of the cases, the complaint discloses the date of despatch of

the notice, which is required to be served upon the Drawer of the cheque before instituting the proceedings under Section 138 of the Negotiable Instruments Act, nor it disclosed any such notice having been served upon the Respondents. It has further observed that this Petitioner could not even produce acknowledgement of such notice, if served upon the Respondents, on record at any point of time, disclosing the essential steps having been taken by the Petitioner prior to the institution of the proceedings under Section 138 of the Negotiable Instruments Act. In order to initiate the proceedings under the said Act, it is absolutely necessary for the complainant to serve a notice upon the Drawer of the cheque informing him about the dishonour of the cheque and giving opportunity to pay the dues within 15 days from receipt of such notice and only on failure to pay such amount within the said period of 15 days, the complainant is entitled to initiate proceedings under Section 138 of the said Act. Since the pre-requirement for initiation of the proceedings under Section 138 of the said Act was not disclosed to have been complied with before filing the complaint, clearly the Magistrate had erred in issuing the process against the Respondents, and on that count, the process having been quashed by the Additional

Sessions Judge, Greater Mumbai, by the impugned order, no fault can be found therein and it does not warrant interference in exercise of writ jurisdiction under Article 227 of the Constitution of India and hence the present Petition is rejected.